

§ 18.24

(1) Objections to the competency of a witness or to the competency, relevancy, or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time.

(2) Errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of parties and errors of any kind which might be obviated, removed, or cured if promptly presented, are waived unless reasonable objection thereto is made at the taking of the deposition.

(3) Objections to the form or written interrogatories are waived unless served in writing upon the party propounding them.

(c) *Effect of taking or using depositions.* A party shall not be deemed to make a person his or her own witness for any purpose by taking his or her deposition. The introduction in evidence of the deposition or any part thereof for any purpose other than that of contradicting or impeaching the deponent makes the deponent the witness of the party introducing the deposition, but this shall not apply to the use by any other party of a deposition as described in paragraph (a)(2) of this section. At the hearing, any party may rebut any relevant evidence contained in a deposition whether introduced by him or her or by any other party.

§ 18.24 Subpoenas.

(a) Except as provided in paragraph (b) of this section, the Chief Administrative Law Judge or the presiding administrative law judge, as appropriate, may issue subpoenas as authorized by statute or law upon written application of a party requiring attendance of witnesses and production of relevant papers, books, documents, or tangible things in their possession and under their control. A subpoena may be served by certified mail or by any person who is not less than 18 years of age. A witness, other than a witness for the Federal Government, may not be required to attend a deposition or hearing unless the mileage and witness fee

29 CFR Subtitle A (7-1-09 Edition)

applicable to witnesses in courts of the United States for each date of attendance is paid in advance of the date of the proceeding.

(b) If a party's written application for subpoena is submitted three (3) working days or less before the hearing to which it relates, a subpoena shall issue at the discretion of the Chief Administrative Law Judge or presiding administrative law judge, as appropriate.

(c) *Motion to quash or limit subpoena.* Within ten (10) days of receipt of a subpoena but no later than the date of the hearing, the person against whom it is directed may file a motion to quash or limit the subpoena, setting forth the reasons why the subpoena should be withdrawn or why it should be limited in scope. Any such motion shall be answered within ten (10) days of service, and shall be ruled on immediately thereafter. The order shall specify the date, if any, for compliance with the specifications of the subpoena.

(d) *Failure to comply.* Upon the failure of any person to comply with an order to testify or a subpoena, the party adversely affected by such failure to comply may, where authorized by statute or by law, apply to the appropriate district court for enforcement of the order or subpoena.

§ 18.25 Designation of administrative law judge.

Hearings shall be held before an administrative law judge appointed under 5 U.S.C. 3105 and assigned to the Department of Labor. The presiding judge shall be designated by the Chief Administrative Law Judge.

§ 18.26 Conduct of hearings.

Unless otherwise required by statute or regulations, hearings shall be conducted in conformance with the Administrative Procedure Act, 5 U.S.C. 554.

§ 18.27 Notice of hearing.

(a) *Generally.* Except when hearings are scheduled by calendar call, the administrative law judge to whom the matter is referred shall notify the parties by mail of a day, time, and place set for hearing thereon or for a pre-hearing conference, or both. No date